

**United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 31, 2023

Hearing Room 1568

10:00 AM

2:19-18382 Shoezoo.com, LLC

Chapter 7

#1.00 Charges, U.S. Bankruptcy Court

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

5/30/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Trustee is directed to file an amended Trustee's Final Report (the "Amended TFR") in accordance with this tentative ruling by no later than **June 7, 2023**. The Trustee will self-calendar a new hearing and provide notice to the estate's creditors of the Amended TFR.

Pleadings Filed and Reviewed:

- 1) Trustee's Final Report [Doc. No. 126] (the "TFR")
 - a) Notice to Professionals to File Application for Compensation [Doc. No. 118]
 - b) Final Application for Compensation of Fees and Reimbursement of Expenses of Menchaca & Company, LLP as Financial Advisors and Consultants for Trustee [Doc. No. 123]
 - c) First and Final Fee Application of SulmeyerKupetz, a Professional Corporation, Attorneys for John J. Menchaca, Chapter 7 Trustee [Doc. No. 124]
 - d) First and Final Fee Application of Greenspoon Marder LLP, Attorneys for John J. Menchaca, Chapter 7 Trustee [Doc. No. 125]
 - e) Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object [Doc. No. 127]
- 2) Cathay Bank's Objection to Trustee's Final Report [Doc. No. 137] (the "Opposition")

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- 3) Chapter 7 Trustee's Reply to Cathay Bank's Objection to Trustee's Final Report [Doc. No. 138] (the "Reply")

I. Facts and Summary of Pleadings

On July 18, 2019 (the "Petition Date"), Shoezoo.com, LLC (the "Debtor") filed a voluntary Chapter 7 petition. John J. Menchaca was appointed as the trustee (the "Trustee"). On April 19, 2023, the Trustee filed the Trustee's Final Report [Doc. No. 126] (the "TFR").

Cathay Bank holds the senior-most perfected lien on all tangible and intangible assets of the Debtor, existing and after-acquired and proceeds thereof. Per the TFR, the Trustee has reported that the sales of certain estate assets resulted in total proceeds of \$17,357.14 (the "Proceeds"). However, per the TFR, Cathay Bank will receive a proposed payment of \$0.00.

On November 14, 2019, Cathay Bank filed Proof of Claim No. 8-1 in the amount of \$2,810,518.42 (the "Original Claim"). The Original Claim listed "TBD" for the value of the property, the amount of the claim that is secured, and the amount of the claim that is unsecured. On May 24, 2023, Cathay Bank filed Amended Claim No. 8-2 (the "Amended Claim"), which only changes the following: the value of the property is \$17,357.14, the amount of the claim that is secured is \$17,357.14, and the amount of the claim that is unsecured is \$2,793,161.28.

The Opposition

Per the Opposition, the Trustee should distribute the Proceeds to Cathay Bank as they are sourced from the sale of the Debtor's assets, which are subject to Cathay Bank's perfected lien. Additionally, Cathay Bank contends that the balance, after payment of the Proceeds on the secured portion of its claim, is undersecured and, therefore, Cathay Bank should also receive a pro rata distribution on its allowed unsecured claim.

The Reply

Per the Reply, the Trustee agrees that the TFR should be amended to distribute the Proceeds to Cathay Bank. However, the Trustee opposes the assertion that Cathay Bank's undersecured claim is automatically bifurcated into a secured portion and an unsecured portion.

II. Findings of Fact and Conclusions of Law

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The Amended Claim Relates Back to the Original Claim

"In the absence of prejudice to an opposing party, the bankruptcy courts, as courts of equity, should freely allow amendments to proofs of claim that relate back to the filing date of the ... claim when the purpose is to cure a defect in the claim as filed or to describe the claim with greater particularity." *Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants, Inc.)*, 754 F.2d 811, 816–17 (9th Cir. 1985). To determine prejudicial effect, the Court looks to "such elements as bad faith or unreasonable delay in filing the amendment, impact on other claimants, reliance by the debtor or other creditors, and change of the debtor's position." *Roberts Farms Inc. v. Boltman (In re Roberts Farms Inc.)*, 980 F.2d 1248, 1252 (9th Cir. 1992). Amendments to proofs of claim are liberally allowed and can relate back to the original claim when the amended claim is based on the same set of operative facts. *Id.* at 1251-52.

The Court finds that the Amended Claim relates back to the Original Claim because its sole purpose is to describe Cathay Bank's claim with "greater particularity." The Original Claim, filed on November 14, 2019, was timely-filed as it was filed before the bar date of November 15, 2019. The Amended Claim simply specifies the amounts of the "secured" and "unsecured" portion that were previously designated as "TBD" in the Original Claim. The use of "TBD" in the Original Claim, and the late filing of the Amended Claim, was reasonable because Cathay Bank could not know the secured and unsecured portions of its claim until after the filing of the TFR, which identifies the results of the Trustee's liquidation efforts and the Proceeds.

Pursuant to the TFR, the value of Cathay Bank's collateral has now been determined (e.g., the Proceeds), which constitutes the secured portion of its claim. The balance of Cathay Bank's claim is undersecured and deemed an allowed unsecured claim. The allowed unsecured claim is, therefore, entitled to a pro rata distribution from the estate along with other general unsecured creditors.

Cathay Bank is deemed to have an allowed secured claim in the amount of the Proceeds and an allowed unsecured claim in the amount of the balance of its claim. The Trustee is directed to file the Amended TFR including payment to Cathay Bank of the Proceeds and a pro rata distribution on its unsecured claim. As these changes will affect overall distributions, the Trustee must provide notice of the Amended TFR to the estate's creditors and self-calendar a new hearing date. The current final report also omits the fees sought by CBIZ Valuation Group ("CBIZ") [Doc. No. 84]. The Amended TFR shall account for these fees. [Note 1]

III. Conclusion

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Based upon the foregoing, the Trustee is directed to file the Amended TFR in accordance with this tentative ruling by no later than **June 7, 2023**. The Trustee will self-calendar a new hearing and provide notice to the estate's creditors of the Amended TFR. The Court will prepare an appropriate order.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Evan Hacker or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

On May 26, 2023, the Trustee withdrew the TFR. Notwithstanding the withdrawal, it is appropriate for this hearing to go forward to address the issues raised by Cathay Bank. In addition, the Court notes that pursuant to Civil Rule 41(a)(2), made applicable to this contested matter by Bankruptcy Rule 9014(c), the hearing on an opposed matter may not be taken off calendar absent a court order or a stipulation signed by the opposing party. These provisions of Civil Rule 41(a)(2) are reiterated in Local Bankruptcy Rule 9013-1(k). Here, the Trustee has not obtained a Court order or a stipulation taking the hearing on the TFR off calendar.

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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**#2.00 APPLICANT: Attorney for Trustee (Other Firm) - SULMEYER
KUPETZ A PROFESSIONAL CORPORATION**

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

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See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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**#3.00 APPLICANT: Attorney for Trustee Fees (Other Firm) - GREENSPOON
MARDER LLP**

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

5/30/2023

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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#4.00 Other State or Local Taxes (post-petition) - Franchise Tax Board (ADMINISTRATIVE)

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

5/30/2023

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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#5.00 APPLICANT: Accountant for Trustee - MENCHACA & COMPANY LLP

Hearing re [127] Applications for chapter 7 fees and administrative expenses

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See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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#6.00 APPLICANT: Trustee - JOHN J. MENCHACA

Hearing re [127] Applications for chapter 7 fees and administrative expenses

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See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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#6.10 APPLICANT: Financial Advisor CBIZ Valuation Group, LLC

Hearing

RE: Hearing re [127] Applications for chapter 7 fees and administrative expenses

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Tentative Ruling:

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See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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2:20-19330 Paul Fernando Valencia

Chapter 7

#7.00 APPLICANT: Accountant for Trustee (Other Firm) - Grobstein Teeple LLP

Hearing re [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/30/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

No objection has been filed in response to the Trustee's Final Report. This Court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Trustee's Fees: \$3,250.00

Total Trustee's Expenses: \$73.92

Accountant for Trustee Fees – Grobstein Teeple LLP: \$1,962.50

Accountant for Trustee Expenses – Grobstein Teeple LLP: \$66.06

Other – Bond Payments, International Sureties, LTD.: \$34.11 (the interim payment is confirmed as final)

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The Chapter 7 Trustee shall submit a conforming order within seven days of the hearing.

Party Information

Debtor(s):

Paul Fernando Valencia

Represented By
Daniel King

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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#8.00 APPLICANT: Bond Payments - International Sureties, LTD

Hearing re [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

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See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

Paul Fernando Valencia

Represented By
Daniel King

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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#9.00 APPLICANT: Trustee - Howard M. Ehrenberg

Hearing re [35] Trustee's Final Report and Applications for Compensation

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See Cal. No. 7, above, incorporated in full by reference.

Party Information

Debtor(s):

Paul Fernando Valencia

Represented By
Daniel King

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:22-13761 Alexander Sihith Keo

Chapter 7

#10.00 Hearing

RE: [84] Motion Disallowing Claim 3-1 As Filed By Capital One N.A. By American Infosource As Agent

Docket 84

Tentative Ruling:

5/30/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, each of the Claim Objections are **OVERRULED** in their entirety, and the claims of Capital One and Wells Fargo are allowed in the amounts claimed.

Pleadings Filed and Reviewed:

- 1) Motion Disallowing Claim 3-1 as Filed by Capital One N.A. By American Infosource as Agent [Doc. No. 84]
 - a) Notice of Claim Objection [Doc. No. 85]
- 2) Motion Disallowing Claim 4-1 as Filed by Capital One N.A. By American Infosource As Agent [Doc. No. 75]
 - a) Notice of Claim Objection [Doc. No. 76]
- 3) Motion Disallowing Claim 5-1 as Filed by Wells Fargo Bank, N.A. [Doc. No. 77]
 - a) Notice of Claim Objection [Doc. No. 78]
- 4) No opposition to any of the Claim Objections is on file

I. Facts and Summary of Pleadings

On July 11, 2022 (the "Petition Date"), Alexander Sihith Keo (the "Debtor") filed a voluntary Chapter 7 petition. The primary assets of the estate are real properties located at 5021 Atlantic Avenue, #3, Long Beach, CA 90805 and 2194 Pasadena

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Avenue, Long Beach, CA 90806 (the "Properties").

On May 12, 2023, the Court approved a settlement agreement between the Trustee and the Debtor pertaining to the administration of the Properties [Doc. No. 91] (the "Settlement Agreement"). Under the Settlement Agreement, the Debtor is required to pay all allowed claims in the case in full, including the costs of administration incurred by the estate's professional, in exchange for the estate's interest in the Properties (the "Settlement Amount"). The Debtor has already paid a deposit of \$40,000 towards the Settlement Amount. The Settlement Agreement requires the Debtor to pay the remaining balance of the Settlement Amount by June 15, 2023. If the Debtor fails to timely pay the Settlement Amount, the Settlement Agreement requires him to cooperate with the Trustee's marketing of the Properties.

The Debtor objects to three Proofs of Claim (the "Claims") filed by Capital One, N.A. by American Infosource as Agent ("Capital One") and Wells Fargo Bank, N.A. ("Wells Fargo," and together with Capital One, the "Claimants"). The Claims at issue, which arise on account of credit card debt, are as follows:

- 1) Claim 3-2—Capital One—\$12,806.91 (unsecured) (Account No. -8124)
- 2) Claim 4—Capital One—\$7,906.31 (unsecured) (Account No. -1124)
- 3) Claim 5—Wells Fargo—\$4,970.97 (unsecured) (Account No. -7760)

The Debtor listed each of the Claimants as general unsecured creditors on Schedule E/F in amounts roughly approximate to the amounts claimed. The Debtor did *not* schedule any of the debts owed to the Claimants as contingent, unliquidated, or disputed.

The Debtor asserts that the Claims must be disallowed because they do not contain (1) sufficient supporting documentation establishing how the amount of interest claimed was calculated or (2) the original credit agreements giving rise to the Claims. As to the Claims filed by Capital One, the Debtor asserts that it is unclear whether the creditor is Capital One or American Infosource as agent for Capital One. The Debtor's theory is that it is possible that the Claims filed by Capital One were transferred to American Infosource; that American Infosource failed to file a notice of the transfer as required by Bankruptcy Rule 3001(e); and that accordingly the Claims lack *prima facie* validity.

None of the Claimants filed an opposition to the Claim Objections. However, Capital One did file an amended Claim 3. The amended Claim 3 does not alter the amount claimed. The only difference is that the amended Claim 3 contains the credit

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agreement giving rise to the Claim.

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II. Findings of Fact and Conclusions of Law

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Where a claim is based upon a writing, "a copy of the writing shall be filed with the proof of claim." Bankruptcy Rule 3001(c)(1). However, for claims based upon an open-end or revolving consumer credit agreement, in lieu of filing the entire credit agreement supporting the claim, the claimant instead is required only to file a statement including all of the following information that applies to the account:

- 1) The name of the entity from whom the creditor purchased the account;
- 2) The name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
- 3) The date of an account holder's last transaction;
- 4) The date of the last payment on the account; and
- 5) The date on which the account was charged to profit and loss.

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Bankruptcy Rule 3001(c)(3)(A).

If the Debtor is an individual, and the claim includes interest, fees, expenses, or other charges incurred before the petition was filed, the claimant must also file "an itemized statement of the interest, fees, expenses, or charges" Bankruptcy Rule 3001(c)(2).

The Debtor's first argument is that the Claims lack *prima facie* validity because they do not include copies of the credit agreements upon which the Claims are based. This argument is without merit, because as explained above, a claimant filing a claim based upon a credit agreement is *not* required to file the entire credit agreement. Instead, the claimant is required only to file a statement containing certain information about the credit account. Bankruptcy Rule 3001(c)(3)(A). Here, each Claimant did file the statements required by Bankruptcy Rule 3001(c)(3)(A). In addition, after the Debtor objected to Claim 3, Capital One filed a copy of the entire credit agreement.

The Debtor next argues that the Claims do not contain sufficient information showing how the amount of interest claimed was calculated. The Debtor's position is that the burden is upon the Claimants to supply a spreadsheet setting forth the applicable interest rate and the calculations yielding the total amount of interest claimed. The Debtor is incorrect. Each Claim has *prima facie* validity because it was executed and filed in accordance with the requirements of Bankruptcy Rule 3001. To create a triable issue of fact, the burden is upon the Debtor to introduce evidence calling into question the validity of the claim. Here, such evidence might consist of a declaration plausibly alleging that the Claimant had miscalculated the interest charged by applying an interest rate different from that set forth in the credit agreement. But no such declaration has been provided.

With respect to the Claims filed by Capital One, the Debtor argues that the Claims are deficient because it is unclear whether the creditor is Capital One or American Infosource as agent for Capital One. This argument is also without merit. In the box asking "who is the current creditor," the Claimant identifies itself as "Capital One N.A. by American InfoSource as agent." Each of the Claims filed by Capital One is executed by an individual employed as a "Bankruptcy Specialist" for American InfoSource. The Bankruptcy Specialists state under penalty of perjury that American InfoSource is a claims servicer acting as the authorized agent for Capital One.

It is entirely appropriate for a claimant to cause an authorized agent to file a proof of claim on its behalf. Contrary to the Debtor's assertion, filing a proof of claim in this manner does not create any ambiguity as to the identity of the claimant.

Finally, the Debtor asserts that certain of the Claims may be time-barred. In

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support of this contention, the Debtor postulates that a two-year statute of limitations applies. The Debtor is mistaken. In California, the statute of limitations for "an obligation or liability founded upon an instrument in writing" is four years. Cal. Civ. Proc. Code § 337(a). On the Capital One credit agreement giving rise to Claim 3, the Debtor made the last payment on April 15, 2020. On the Capital One credit agreement giving rise to Claim 4, the Debtor made the last payment on April 14, 2020. On the Wells Fargo credit agreement giving rise to Claim 5, the Debtor made the last payment on April 12, 2020. All of these payments were made within four years of the July 11, 2022 Petition Date. None of the Claims are time-barred.

III. Conclusion

Based upon the foregoing, each of the Claim Objections are **OVERRULED** in their entirety. The claims of Capital One and Wells Fargo are allowed in the amounts claimed. The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Alexander Sihith Keo

Represented By
Andy C Warshaw

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
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2:22-13761 Alexander Sihith Keo

Chapter 7

#11.00 Hearing

RE: [75] Motion Disallowing Claim 4-1 As Filed By Capital One N.A. By American Infosource As Agent

Docket 75

Tentative Ruling:

5/30/2023

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

Alexander Sihith Keo

Represented By
Andy C Warshaw

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
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2:22-13761 Alexander Sihith Keo

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#12.00 Hearing

RE: [77] Motion Disallowing Claim 5-1 As Filed By Wells Fargo Bank, N.A

Docket 77

Tentative Ruling:

5/30/2023

See Cal. No. 10, above, incorporated in full by reference.

Party Information

Debtor(s):

Alexander Sihith Keo

Represented By
Andy C Warshaw

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
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2:21-16033 Orion Bay Estates III LLC

Chapter 11

#13.00 HearingRE: [84] Application for Compensation ; Declarations of Jeff Thompson and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service for Roksana D. Moradi-Brovia, Debtor's Attorney, Period: 7/28/2021 to 4/5/2023, Fee: \$34,030, Expenses: \$2,184.24.

Docket 84

Tentative Ruling:

5/30/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

Having reviewed the first and final fee application filed by this applicant, the Court approves the application and awards the fees and expenses set forth below on a final basis:

Fees: \$34,030.00

Expenses: \$2,184.24

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Orion Bay Estates III LLC

Represented By

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Los Angeles
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Matthew D. Resnik
Roksana D. Moradi-Brovia

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2:22-13500 Moussa Moradieh Kashani

Chapter 11

#14.00 HearingRE: [220] Motion for order confirming chapter 11 plan First Amended Plan of Reorganization Proposed by Debtor Moussa Moredieh Kashani

Docket 220

Tentative Ruling:

5/30/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Confirmation Motion is **DENIED**. As the Debtor has failed to obtain confirmation of the Amended Plan by May 31, 2023, pursuant to the *Order: (1) Denying Without Prejudice Motions to Convert or Dismiss Chapter 11 Case and (2) Fixing May 31, 2023 as the Deadline for the Debtor to Obtain an Order Confirming a Plan* [Doc. No. 119], the case is hereby converted to Chapter 7 without further notice or hearing.

Pleadings Filed and Reviewed:

- 1) Memorandum in Support of Confirmation of First Amended Plan of Reorganization Proposed Under Chapter 11 of the Bankruptcy Code [Doc. No. 234] (the "Confirmation Motion")
 - a) Order: (1) Finding that the Amended Disclosure Statement Contains Adequate Information and (2) Setting Dates Pertaining to Plan Confirmation [Doc. No. 207]
 - b) First Amended Plan of Reorganization Proposed by Debtor Moussa Moredieh Kashani [Doc. No. 213] (the "Amended Plan")
 - c) First Amended Disclosure Statement Describing Debtor's Chapter 11 Plan of Reorganization [Doc. No. 214] (the "Amended Disclosure Statement")
 - d) Solicitation Package for the Amended Plan [Doc. No. 215]
 - e) Notice of Hearing on Confirmation of the Amended Plan [Doc. No. 216]
 - f) Proof of Service of Solicitation Package for the Amended Plan [Doc. No. 218]

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- 2) Wilshire House Association's Objection to the Amended Plan [Doc. No. 235] (the "HOA Opposition")
- 3) JPMorgan Chase Bank, N.A.'s Objection to the Amended Plan [Doc. No. 236] (the "Chase Opposition")
 - a) Notice of Withdrawal of the Chase Opposition [Doc. No. 254]
- 4) PNC Bank, N.A.'s Objection to the Amended Plan [Doc. No. 237] (the "PNC Opposition")
 - a) Notice of Withdrawal of the PNC Opposition [Doc. No. 253]
- 5) U.S. Bank, N.A.'s Objection to the Amended Plan [Doc. No. 238] (the "US Bank Opposition")
- 6) Hankey Capital, LLC's Objection to the Amended Plan [Doc. No. 239] (the "Hankey Opposition")
- 7) City National Bank's Objection to the Amended Plan [Doc. No. 242] (the "City Opposition", and together with the HOA Opposition, the Chase Opposition, the PNC Opposition, the US Bank Opposition, and the Hankey Opposition, collectively, the "Oppositions")
- 8) Debtor's Omnibus Reply to the Oppositions [Doc. No. 246] (the "Reply")

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, Moussa Moradieh Kashani (the "Debtor"), filed a voluntary Chapter 11 case on June 24, 2022 (the "Petition Date"). The Debtor previously filed a Chapter 11 case in 1991, Case No. 1:91-bk-92891-GM. The Debtor filed a second Chapter 11 case on October 15, 2010, Case No. 2:10-bk-54460-ER (the "First Case"). A plan of reorganization was confirmed in the First Case on October 9, 2013 (the "First Plan"). No discharge has been entered in the First Case, nor has the First Case been dismissed or converted. The Debtor now seeks confirmation of the Amended Plan.

Pursuant to the *Order: (1) Denying Without Prejudice Motions to Convert or Dismiss Chapter 11 Case and (2) Fixing May 31, 2023 as the Deadline for the Debtor to Obtain an Order Confirming a Plan* [Doc. No. 119], May 31, 2023 is fixed as the deadline for the Debtor to obtain an order confirming the Amended Plan (the "Confirmation Deadline"). As set forth in the Court's order, the Confirmation Deadline "will not be extended absent exceptionally compelling circumstances." If the Confirmation Deadline is not met, the case will be converted to Chapter 7 without further notice or hearing.

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Summary of the Amended Plan

The Amended Plan's classification structure, and the treatment of each class under the Amended Plan, is set forth in the following table:

Class	Description	Impaired	Entitled to Vote	Estimated Recovery	Treatment
N/A	Administrative Expenses	N/A	N/A	N/A	Administrative expenses total approximately \$635,551.69. Depending on the claimant, administrative expenses will be paid (a) in full on the Effective Date; or (b) paid in full on the later of the Effective Date and the date the Court enters an order allowing such fees.
1	Chase/PNC (10601 Wilshire, Unit 1601)	Unimpaired	No	100%	N/A
2	Wilshire House HOA (10601 Wilshire, Unit 1601)	Impaired	Yes	100%	Claimant shall receive 28 equal Quarterly Plan Payments.
3	BNY Mellon/Shellpoint (10601 Wilshire, Unit 501)	Impaired	Yes	100%	Monetary defaults added to principal balance and loan reinstated.

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4	Wilshire House HOA (10601 Wilshire, Unit 501)	Impaired	Yes	100%	Claimant shall receive 28 equal Quarterly Plan Payments.
5	US Bank/Nationstar (10601 Wilshire, Unit 602)	Impaired	Yes	100%	Monetary defaults added to principal balance and loan reinstated.
6	Wilshire House HOA (10601 Wilshire, Unit 602)	Impaired	Yes	100%	Claimant shall receive 28 equal Quarterly Plan Payments.

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7	Deutsche/Select (10445 Wilshire, Unit 904)	Impaired	Yes	100%	Monetary defaults added to principal balance and loan reinstated. The note will be modified as follows: (i) the amount of the note will be altered to include all monetary defaults, accrued and unpaid interest and reasonable fees and other charges; (ii) the maturity date of the loan shall be extended to August 1, 2045; (iii) the interest rate on the note shall be fixed at 5.5%; and (iv) the allowed amount of the note shall be amortized over 30 years at the fixed interest rate of 5.5% with a balloon payment for the balance due on August 1, 2045.
8	Grand Homeowners HOA (10445 Wilshire, Unit 904)	Impaired	Yes	100%	Claimant shall receive 28 equal Quarterly Plan Payments.

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9	Chase (10550 Wilshire, Unit 1204)	Impaired	Yes	100%	Monetary defaults added to principal balance and loan reinstated. The note will be modified as follows: (i) 2.81% fixed interest rate; (ii) loan term for 180 months; (iii) P&I monthly payment of \$2,022.49; and (iv) escrowed monthly real property taxes.
10	Wilshire Thayer HOA (10550 Wilshire, Unit 1204)	Impaired	Yes	100%	Claimant shall receive 28 equal Quarterly Plan Payments.
11	Dardashti (10550 Wilshire, Unit 1204)	Impaired	Yes	100%	Monthly Payment: \$2,894 over 6 years and a balloon payment of \$451,068.22.
12	Wells Fargo/Select (10724 Wilshire, Unit 704)	Impaired	Yes	100%	Contractual loan arrears will be deferred as a non-interest-bearing balloon payment on the maturity date.
13	Park Wilshire HOA (10724 Wilshire, Unit 704)	Impaired	Yes	100%	Claimant shall receive 28 equal Quarterly Plan Payments.

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14	Azadegan Judgment	Impaired	Yes	100%	Claimant shall receive 28 equal Quarterly Plan Payments.
15	Chase – 2020 Jaguar XE S	Unimpaired	No	100%	N/A
16	BofA – 2007 Mercedes Benz SL550	Impaired	Yes	100%	Claimant shall receive 4 equal Quarterly Plan Payments.
17	Franchise Tax Board	Unimpaired	No	100%	N/A
18	Other Secured Claims	Unimpaired	No	100%	N/A
19	General Unsecured Claims	Impaired	Yes	100%	On the Effective Date, each Holder of an Allowed General Unsecured Claim shall receive, up to the full amount of such Holder's Allowed General Unsecured Claim, its respective portion of 40 Quarterly Plan Payments, which shall be distributed Pro Rata among the Holders of the Allowed General Unsecured Claims.

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20	Interest of the Debtor	Unimpaired	No	The Debtor shall retain his interests.	N/A
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Per the Reply, Classes 2, 3, 4, 6, 8, 10, 13, 16, and 19, which are impaired, have voted to reject the Amended Plan. Due to settlement negotiations, Classes 1, 7, 9, and 12 have changed their dissenting votes to accepting votes in favor of the Amended Plan. The Debtor anticipates that Class 5 will change its dissenting vote to an accepting vote before the hearing on the Confirmation Motion.

The Debtor owns six personal residential condominiums (collectively, the "Personal Properties"). In addition, the Debtor owns equity interests in eleven entities (collectively, the "Non-Debtor Entities") that own income producing commercial properties (collectively, the "Non-Debtor Properties").

The Amended Plan will be funded by contributions from the Non-Debtor Entities. Per the Confirmation Motion, four of the Non-Debtor Properties are in escrow for a total of approximately \$36 million (collectively, the "Pending Sales"). Additional Non-Debtor Properties are currently being marketed for sale or refinancing. The proceeds of the Pending Sales will be used to satisfy/reduce blanket liens against those properties, which will free up cash flow on the remaining retained Non-Debtor Properties. The net proceeds of the Pending Sales/refinancings (after the payment of the blanket liens) will be used to fund the Amended Plan.

Additionally, the Plan will be funded by the rental revenues generated from the retained Non-Debtor Properties. Per the Amended Disclosure Statement, prior to the sale of any of the Non-Debtor Properties, the Non-Debtor Entities are projected to provide the Debtor with an average monthly income of \$133,842.18. The Debtor also reserves the right, in his sole and absolute discretion, to sell or lease any of the Personal Properties.

The Oppositions

The HOA Opposition & The Debtor's Reply

Wilshire House Association (the "HOA") asserts that the Amended Plan cannot be confirmed for the following reasons [**Note 1**]:

1. The Amended Plan is infeasible and neither fair nor equitable because the

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Debtor is in default of the post-petition HOA dues and the Special Assessments and the Debtor proposes paying the HOA over a seven-year period.

2. The Amended Plan was filed in bad faith because this is the Debtor's third bankruptcy filing, the second of which is admittedly in default. The Amended Plan is an improper modification of the First Plan. The Amended Plan does not address how and why the Debtor defaulted under the First Plan.
3. The Amended Plan is vague and ambiguous and does not provide adequate information, including the exact amount of funds to be contributed by the Non-Debtor Entities, and whether there are any restrictions on the use of such funds.

Per the Reply, the Amended Plan is feasible, fair and equitable, and neither vague nor ambiguous with respect to the HOA. The Amended Plan provides that the Special Assessments will be paid on the Effective Date. The Debtor believes he is current on all monthly dues owed to the HOA.

The Amended Plan is feasible because the Debtor will have sufficient funds to make all Effective Date payments and the monthly payments due under the Amended Plan. The proceeds from the Pending Sales, cash flow, and funds from refinancing remaining Non-Debtor Properties will fund the Amended Plan. In addition, the Amended Plan provides that the Debtor will either rent or sell Unit 501 and Unit 704. If necessary, the Debtor will also rent or sell other Personal Properties. The Debtor contends that funding is not speculative because the Pending Sales are well underway and the Debtor is also negotiating additional sales and refinancings of the remaining Non-Debtor Properties.

The Debtor contends that the Amended Plan is proposed in good faith because he has complied with all orders of the Court and all claimants will receive more under the Amended Plan than they would in a Chapter 7 liquidation.

The US Bank Opposition & The Debtor's Reply

U.S. Bank, N.A. ("US Bank") asserts that the Amended Plan cannot be confirmed for the following reasons:

1. The Amended Plan is ambiguous with respect to US Bank's claim, including whether the arrears will be capitalized or the claim shall remain unaltered.
2. The Debtor contends that it will object to US Bank's claim but has yet to do

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so. However, without an adjudication of US Bank's claim, it is not possible to fully evaluate the feasibility of the Amended Plan.

3. The Amended Plan is infeasible and not proposed in good faith. The Debtor could reopen the First Case and modify the First Plan, however, that would require good faith negotiations with creditors because of the substantial defaults under the First Plan. Therefore, the Amended Plan seeks to modify the terms of the First Plan in bad faith.
4. Contrary to the Amended Plan's language, as the Debtor is an individual and is currently operating under the First Plan, the Debtor is not entitled to a discharge upon confirmation.

Per the Reply, the Debtor contends that settlement discussions with US Bank are ongoing.

The Hankey Opposition & The Debtor's Reply

Hankey Capital, LLC ("Hankey") asserts that the Amended Plan cannot be confirmed for the following reasons:

1. The Amended Plan is ambiguous with respect to (i) Class 19, including when the first payment is to be made and whether general unsecured creditors will receive both 100% of their claims and interest (if it is not 100%, then the Amended Plan violates the absolute priority rule); (ii) the Personal Properties and their use in funding the Amended Plan; (iii) the Pending Sales and the unknown amount of net proceeds; and (iv) what impact the Pending Sales, which generate over half of the net income of the Debtor, and the resulting loss of rental income will have on the ability to fund the Amended Plan.
2. The Debtor's Chapter 7 liquidation analysis contained in the Confirmation Motion is flawed because it does not take into account the Debtor's interests in the Non-Debtor Entities. Therefore, the Debtor has not established that the Amended Plan is in the best interests of general unsecured creditors.
3. The Amended Plan is infeasible. The Debtor's estimate of total general unsecured claims (Class 19), which is \$300,000.00–\$1,226,186.00, does not include the amount of Hankey's amended claim. The Pending Sales will eliminate over half of the Debtor's projected income generated from the Non-Debtor Entities used to fund the Amended Plan. Moreover, the Debtor has not provided any evidence as to the amount of net proceeds from the Pending

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Sales that will be available to fund the Amended Plan.

4. The Amended Plan's provision relating to the automatic disallowance of amended claims after the bar date is contrary to the Bankruptcy Code.

Per the Reply, the Debtor intends to file a modification to the Amended Plan to correct certain errors identified by Hankey. The Debtor confirms that Class 19 will receive 100% of their allowed unsecured claims. Additionally, the Debtor failed to include Hankey's amended claim and, therefore, Class 19 ranges from \$426,000.00 to \$2,226,000.00.

According to the Debtor, the net proceeds of the Pending Sales and the refinancing of the remaining Non-Debtor Properties, which is currently being negotiated, cannot be ascertained with certainty at this time. The net proceeds are unknown until the sales and refinancing are completed and closed, the liabilities of the applicable Non-Debtor Entities settled, and the taxable income determined and paid.

The Debtor argues that the Chapter 7 liquidation analysis is accurate and the Amended Plan does satisfy the best interests test because the Debtor has a junior interest in the Non-Debtor Entities. Senior creditors of the Non-Debtor Entities need to be paid before the Debtor receives any distribution on account of his interest in the Non-Debtor Entities. Hankey's argument fails to take the senior claims of creditors of the Non-Debtor Entities, which are significant, into consideration. Additionally, Hankey provides no contradictory evidence of value of the Debtor's interests in the Non-Debtor Entities. Therefore, the value of the Debtor's interests in the Non-Debtor Entities is \$0.00 and general unsecured creditors would receive no distribution in a Chapter 7 context.

The Non-Debtor Properties are encumbered by blanket deeds of trust in favor of (a) Lone Oak Fund ("Lone Oak") in the approximate amount of \$45,185,000; and (b) RTI Properties, Inc ("RTI") in the approximate amount of \$6,000,000 (collectively, the "Senior Blanket Liens"). The Non-Debtor Property owned by Commonwealth Properties, a Non-Debtor Entity, is encumbered by an \$8 million lien. The Non-Debtor Properties subject to the lien of Lone Oak are being managed by a receiver. A foreclosure proceeding was instituted by RTI, although it has been continued as the parties work to market and sell/refinance the assets. The Debtor further notes that the Non-Debtor Entities have additional liabilities that need to be satisfied and that there will be closing costs associated with the Pending Sales and refinancings.

The City Opposition & The Debtor's Reply

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City National Bank ("City") asserts that the Amended Plan cannot be confirmed for the following reasons:

1. The Amended Plan is not proposed in good faith. The Debtor has not and will not commit to monetize the Personal Properties. As the Debtor is attempting to modify City's treatment under the First Plan, the Debtor must provide evidence that he suffered real losses from lack of rental payments and that he was unable to make payments under the First Plan. However, while defaulting under the First Plan, the Debtor found income to fund purchases and payments on non-essential luxury vehicles.
2. The Amended Plan is not in the best interests of general unsecured creditors because the updated liquidation analysis is flawed. The liquidation analysis includes inflated Chapter 7 administrative costs and provides no evidence of the Personal Properties' equity/value.

Per the Reply, the Debtor reaffirms his intention to file an objection to City's claim. The Debtor contends that the Amended Plan was filed in good faith and satisfies the best interests test because Class 19 will be paid 100%, plus interest, on their allowed unsecured claims.

The Chase Opposition & The Debtor's Reply

JPMorgan Chase Bank, N.A. ("Chase") asserts that the Amended Plan cannot be confirmed because the Amended Plan does not completely adhere to the language regarding the treatment of Chase's claim that the Debtor and Chase had previously agreed upon.

Per the Reply, a settlement has been reached with Chase and the Chase Opposition has been withdrawn.

The PNC Opposition & The Debtor's Reply

PNC Bank, N.A. ("PNC") asserts that the Amended Plan cannot be confirmed because the Amended Plan is ambiguous as to PNC's claim, including the amount of the arrears to be cured.

Per the Reply, a settlement has been reached with PNC and the PNC Opposition has been withdrawn.

The Reply

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Per the Reply, the Debtor asserts that the Amended Plan should be confirmed over the Oppositions for the above-stated reasons. In the alternative, the Debtor requests that the Confirmation Deadline be extended to at least June 30, 2023 so that the Pending Sales, which are being held up by negotiations with the secured creditors of the Non-Debtor Properties, may close and the additional sales/refinancing of the remaining Non-Debtor Properties may advance.

II. Findings of Fact and Conclusions of Law

For the reasons stated below, the Confirmation Motion is DENIED.

A. The Amended Plan is Not Feasible as Required by § 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

"The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." *Pizza of Hawaii, Inc. v. Shakey's Inc. (Matter of Pizza of Hawaii, Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985). To satisfy the feasibility requirement, the Debtor must present "evidence to demonstrate that the Plan has a reasonable probability of success." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1364 (9th Cir. 1986). "The key element of feasibility is whether there exists a reasonable probability that the provisions of the plan of reorganization can be performed. However, where the financial realities do not accord with the proponent's projections or where the projections are unreasonable, the plan should not be confirmed.... 'The inquiry is on the viability of the reorganized debtor, and its ability to meet its future obligations, both as provided for in the plan and as may be incurred in operations.' 'In this respect, section 1129(a)(11) requires the plan proponent to show concrete evidence of a sufficient cash flow to fund and maintain both its operations and obligations under the plan.'" *In re Sagewood Manor Assocs. Ltd. P'ship*, 223 B.R. 756, 762 (Bankr. D. Nev. 1998) (internal citations omitted). "Feasibility is the heart of every Chapter 11 reorganization case. It is the most important element of § 1129(a)." *In re Linda Vista Cinemas, L.L.C.*, 442 B.R. 724, 737 (Bankr. D. Ariz. 2010).

For the reasons outlined below, the Debtor has failed to carry his burden of

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demonstrating that the Amended Plan is feasible. Therefore, the Court finds that the Amended Plan does not satisfy § 1129(a)(11).

i. Absence of Critical Financial Information

The Amended Plan will be funded by contributions from the Non-Debtor Entities. Per the Confirmation Motion, four of the Non-Debtor Properties are in escrow for a total of approximately \$36 million. Additional Non-Debtor Properties are currently being marketed for sale or refinancing. The proceeds of the Pending Sales will be used to satisfy/reduce the Senior Blanket Liens, which will free up cash flow on the remaining retained Non-Debtor Properties. The net proceeds of the Pending Sales/refinancings (after the payment of the Senior Blanket Liens) will be used to fund the Amended Plan.

In the Reply, the Debtor provides a first glimpse into the Non-Debtor Properties' secured debt, which the Debtor himself characterizes as significant. The Non-Debtor Properties are encumbered by the Senior Blanket Liens in the approximate amount of \$51.2 million. An additional Non-Debtor Property is encumbered by an \$8 million lien. The Debtor further notes that the Non-Debtor Entities have other liabilities that need to be satisfied and that there will be closing costs associated with the Pending Sales and refinancings.

Per the Reply, the net proceeds of the Pending Sales and the refinancing of the remaining Non-Debtor Properties, which are currently being negotiated, cannot be ascertained with reasonable certainty at this time. The net proceeds are unknown until the sales/refinancing are completed and closed, the liabilities of the applicable Non-Debtor Entities settled, and the taxable income determined and paid. As the Debtor's interest is junior to senior secured interests in the Non-Debtor Properties, such creditors must be paid before the Debtor receives any distribution.

Additionally, the Debtor notes that the Non-Debtor Properties subject to the lien of Lone Oak are being managed by a receiver. A foreclosure proceeding was also instituted by RTI, although it has been continued as the parties work to market and sell/refinance the assets.

The Amended Plan will also be funded by the rental revenues generated from the retained Non-Debtor Properties. Per the Amended Disclosure Statement, prior to the sale of any of the Non-Debtor Properties, the Non-Debtor Entities are projected to provide the Debtor with an average monthly income of \$133,842.18. The Debtor also reserves the right, in his sole and absolute discretion, to sell or lease any of the Personal Properties.

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The Courts notes that, as the Oppositions point out, the Amended Plan is severely wanting in critical information related to the validity and feasibility of the Debtor's financial projections. In fact, the pleadings provided raise more questions than answers. Most critical is the lack of any substantive information related to the Pending Sales, which are supposedly a major funding source of the Amended Plan. However, given the Senior Blanket Liens, is there any equity remaining in the Non-Debtor Properties and, if so, how much? After reviewing the information disclosed in the Reply related to the Senior Blanket Liens, the Court is concerned as to the amount of equity remaining in the Non-Debtor Properties and their ability to realize funds for payments under the Amended Plan. Relatedly, what are the projected net proceeds of the Pending Sales/refinancings, after all necessary payments are made (*e.g.*, the Senior Blanket Liens), that will be available to fund the Amended Plan? Excluding those properties involved in the Pending Sales, which account for over half of the projected net income of the Debtor, what is the projected monthly income generated from the retained Non-Debtor Properties to be used to fund the Amended Plan? What are the terms in the potential refinancings of the Non-Debtor Properties? What information is available regarding the purchaser involved in the Pending Sales? What are the tax implications with respect to the Pending Sales and the resulting effect on the net proceeds available to fund the Amended Plan?

At this stage of confirmation, the Debtor bears the burden of proof with respect to feasibility of the Amended Plan. Given the extent of the estate and its creditors and the failure of the First Plan, the Debtor must provide detailed projections and financial figures supported by admissible evidence. The Court notes that the Debtor's declarations attached to the Confirmation Motion and the Amended Disclosure Statement do not include any attestation with respect to the accuracy or formulation of the financial projections provided in the Amended Plan. Who prepared the financial projections? Without the above information, the Court notes a serious concern regarding the unknown extent of the benefit of the Pending Sales to the estate and/or whether the Pending Sales are illusory. During the pendency of the instant case, which has been open for almost one year, the Debtor has had the ability to answer the vast series of questions highlighted above, however, he failed to do so. Therefore, the Court finds that the Debtor has failed to meet his burden of proof with respect to feasibility.

Lastly, the Court notes that the Amended Plan does not contain any estimate of the quarterly payments to be made to Class 19's general unsecured creditors. Also, the fact that the Non-Debtor Properties subject to the lien of Lone Oak are being managed

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under a receivership further calls into question the feasibility of the Amended Plan.

In the absence of critical, concrete information related to the financials of the Debtor noted above, the Court is unable to determine whether the Debtor is likely to be able to fulfill his financial obligations under the Amended Plan. Therefore, the Amended Plan infeasible.

ii. Substantial Similarity to the First Plan

At the time the First Plan was confirmed, the Debtor owed arrearages ranging from between approximately \$25,000 to \$130,000 to certain of the lenders holding claims secured by the Personal Properties. The First Plan required the Debtor to make monthly payments over a five-year period to these secured lenders to cure the arrearages. In addition to these cure payments, the Debtor was also required to make monthly payments to the lenders until the maturity date of their loans.

On May 3, 2016, the Debtor filed a motion for entry of a final decree and an order closing the First Case. On June 1, 2016, the Court granted the Debtor's motion for entry of a final decree, but denied the Debtor's request for entry of a discharge because not all payments required under the First Plan had been made. To date, no discharge has been entered in the First Case.

The Debtor is admittedly in default under the First Plan. In lieu of seeking to modify the First Plan, the Debtor filed the instant bankruptcy case, his third filing. The Court's concern is that the First Plan and the Amended Plan are substantially similar. Mirroring the Amended Plan, the First Plan was funded by the Debtor's earnings from the Non-Debtor Entities. The Debtor has provided no evidence of any meaningful change in his business operations to suggest that the Amended Plan is now feasible. There is no evidence to show that the Debtor's failure under the First Plan will be avoidable under the Amended Plan. On the contrary, the economic market, specifically borrower-favorable interest rates, has notably declined since the First Plan. The Debtor was in a more borrower-friendly interest rate market during the First Plan, under which he defaulted, than he finds himself in today.

Additionally, like the First Plan, the Debtor continues to resist monetizing the Personal Properties and various luxury vehicles. Under the Amended Plan, while the Debtor states an intention to list for sale or lease three of the six Personal Properties commencing six or twelve months (depending on the condominium) from the Effective Date, such a decision is "...subject to consultation with his tax advisor...[and] at his option and in his sole and absolute discretion..." No basis for the six-to-twelve-month delay is provided. Similarly, as was the case in the First Case,

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the Debtor continues to be accused of failing to collect rental income for various Personal Properties, including allowing family members to live rent-free.

iii. Significant Uncertainty Regarding the Size of Class 19 Caused by Potential Objections

Under the Amended Plan, the Debtor estimated Class 19 – general unsecured creditors – to be between approximately \$300,000.00 and \$1,226,186.88; however, per the Reply, the Debtor updated the estimate of Class 19 to be between approximately \$426,000.00 and \$2,226,000.00, depending on the outcome of various claim objections. Two of the largest unsecured creditors – City and Hankey – are subject to the Debtor's stated intention to object.

Under the Amended Plan, the Debtor states an intention to file objections to City's general unsecured claim in the amount of \$926,186.88 and Hankey's amended unsecured claim in the amount of \$1,883,445.06. The Debtor has not provided any basis for objecting to either City or Hankey's claim. As the allowability of City and Hankey's claims significantly impacts the size of Class 19 and the related payouts to its members, the absence of any information regarding the basis for objecting to their claims calls into question the feasibility of the Amended Plan.

Adding further strain to Class 19, on March 30, 2023, Bronzetrete Terraces, LLC and AMG Private Custody Services, Inc. filed a motion to deem their unsecured claim in the amount of \$195,015.00 (the "Claim") as timely filed [Doc. No. 210] (the "Motion"). The Claim is not included in the Amended Plan. On May 3, 2023, the Court granted the Motion and deemed the Claim timely filed [Doc. No. 232]. Per the opposition to the Motion, the Debtor admittedly characterized the Claim as of significant value.

iv. Ongoing Litigation Involving Alvarado, LLC, a Non-Debtor Entity

In addition to the litigation disclosed in the Amended Disclosure Statement, Alvarado, LLC ("Alvarado") – a Non-Debtor Entity – is currently subject to litigation.

On March 13, 2023, Silvia Mejia, et al. (collectively, the "Plaintiffs") filed a motion seeking an order confirming that the automatic stay does not apply to Alvarado in a state court action bearing the caption *Silvia Mejia, et al. v Alvarado, LLC*, Case No. 20STCV22869 (the "State Court Action"), pending in Los Angeles County Superior Court [Doc. No. 198].

The State Court Action commenced on June 17, 2022 by filing a complaint against Alvarado asserting claims for failure to provide habitable dwelling, breach of

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covenant and right to quiet enjoyment and possession of the property, nuisance, negligence, and violation of Civil Code Section 1942.4 (the "Complaint"). Trial was scheduled to begin on April 23, 2023.

On April 10, 2023, the Court entered an order confirming that Alvarado is not a debtor in the Debtor's instant bankruptcy case, allowing the State Court Action to proceed against Alvarado [Doc. No. 223].

Per the Amended Disclosure Statement, the Debtor's projected monthly includes approximately \$180,000.00 per month derived from Alvarado. Alvarado is one of the projected Non-Debtor Entities used to fund the Amended Plan. As the Debtor's monthly projections include Alvarado, which is now subject to the State Court Action and the possibility of a sizable judgment being levied against it, the Amended Plan's feasibility is called into question.

v. History of Foreclosure in Summit, LLC

On July 15, 2022, Summit, LLC ("Summit") filed a voluntary Chapter 11 petition, Case No. 2:22-bk-13853-ER. The Debtor, who formed Summit, is the sole managing member of Summit. Summit's primary asset was a 47-unit apartment complex located at 324 S. Catalina St., Los Angeles, CA 90020 (the "Summit Property"). The Summit Property was encumbered by a First Deed of Trust in favor of Hankey.

Hankey moved for relief from the automatic stay, pursuant to § 362(d)(3), based upon Summit's failure to timely pay in full the monthly post-petition non-default interest owed to Hankey. On December 22, 2022, the Court granted Hankey's motion for relief from stay with respect to the Summit Property [Doc. No. 104, 2:22-bk-13853-ER]. Subsequently, Hankey foreclosed on the Summit Property. On May 17, 2023, the Summit case was dismissed pursuant to the Court's order [Doc. No. 124, 2:22-bk-13853-ER].

The Court notes that as the Debtor was the sole managing member of Summit, Hankey's foreclosure on the Summit Property is indicative of the questionable feasibility of the Debtor's instant case and the Amended Plan.

B. The Amended Plan is Not Proposed in Good Faith Pursuant to § 1129(a)(3)

Pursuant to § 1129(a)(3), a Chapter 11 plan must be proposed "...in good faith and not by any means forbidden by law." Good faith requires that a plan achieve a result consistent with the objections and purposes of the Code and the fundamental fairness in dealing with one's creditors. *In re Stolrow's Inc.*, 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988).

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Per the City Opposition, City holds a general unsecured claim in the amount of \$926,186.88 based upon its allowed Proof of Claim in the First Case, less certain payments made under the First Plan (the "City Claim"). The City Claim is based on the Debtor's personal guarantee with respect to real property located at 5890 Highland Hills Drive, Dallas, TX 75241 (the "City Property"). The City Property had subsequently been subject to a receivership and a short sale, which left a deficiency on which City claimed that the Debtor, as guarantor, was liable.

During the First Case, the Debtor objected to the City Claim. Through various arguments, the Debtor maintained that he was not liable on the City Claim with respect to the City Property. However, after reviewing the Debtor's arguments, the Court issued the *Order Denying Debtor's Objection to Claim of City National Bank and Allowing Proof of Claim No. 35, in its Entirety* [Doc. No. 663, 2:10-bk-54460-ER] (the "City Order"), which incorporates the Court's detailed tentative ruling. While overruling the Debtor's objection and allowing the City Claim, in its entirety, the Court found the Debtor liable, as guarantor, on the City Claim in the First Case. Among the various findings and conclusions, "...the Court concludes that California law controls the parties' obligations under the Guarantee, the Debtor does not dispute that, under California law, the Claim is enforceable... Alternatively, even if the Texas law is applied... the Court concludes that the Claim is not barred by the two year statute of limitations provided in Texas Property Code section 51.003 (a)."

However, under the Amended Plan, the Debtor has stated an intention to file an objection to the City Claim. Per the Reply, the Debtor reaffirmed such an intention and stated that City would have the opportunity to litigate the amount of its claim. City contends that because the Debtor's objection was already overruled in the First Case and the City Claim was allowed, the Debtor's plan to object to the City Claim under the Amended Plan is a testament to the Debtor's lack of good faith.

The Court agrees with City's position. The allowability of the City Claim has already been adjudicated by the Court in the First Case – the Debtor was obligated to pay the City Claim under the First Plan. As noted above, the Court issued the City Order and a related detailed tentative ruling, which outlined substantial findings regarding why the Debtor's objection was overruled and why the City Claim was allowed. Therefore, the stated and reaffirmed intention to object to the City Claim, which makes a material difference to the size of Class 19, under the Amended Plan amounts to (i) the Debtor's attempt to obtain reconsideration of the Court's order, (ii) an improper attempt to modify the treatment of the City Claim under the First Plan, and (iii) an indication of bad faith.

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In addition to the lack of good faith evidenced with respect to the City Claim, the instant case is the Debtor's third Chapter 11 filing. As noted above, the First Case, which remains open today, includes the First Plan, which is currently under default. Between the series of Chapter 11 filings, the continued pendency of the First Case and failure of the First Plan, and the serious issues with the Amended Plan outlined in this tentative ruling, the Debtor has evidenced an inability to effectively administer a case under Chapter 11 of the Bankruptcy Code.

For the foregoing reasons, the Court finds that the Amended Plan is not proposed in good faith pursuant to § 1129(a)(3).

C. The Amended Plan Does Not Satisfy the Best Interests Test Pursuant to § 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Originally, the Debtor anticipated Class 19 general unsecured creditors receiving between 12% and 52%, depending on whether an objection to the City Claim was filed, in a hypothetical Chapter 7 liquidation. In the Confirmation Motion, the Debtor revised the liquidation analysis and concluded that Class 19 would receive zero distribution in a Chapter 7 case. In the Reply, the Debtor notes that his interests in the Non-Debtor Entities are junior to the Non-Debtor Entities' senior secured creditors, which are significant and must be paid before the Debtor receives any distribution. Therefore, the Debtor asserts that his liquidated interests in the Non-Debtor Entities likely amounts to \$0.00.

The Court is not persuaded that Class 19 general unsecured creditors would receive \$0.00 in a Chapter 7 context. The Debtor's Chapter 7 liquidation analysis contains figures that are unrealistic and rely on questionable assumptions. The Chapter 7 liquidation analysis also contains a major contradiction: the value of the Debtor's interests in the Non-Debtor Entities in Chapter 7 versus Chapter 11.

In Chapter 7, the Debtor contends that his interests in the Non-Debtor

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Entities amounts to \$0.00 because of significant senior creditors who must be paid off before the Debtor is entitled to any distribution. As noted above, the Debtor has revealed significant encumbrances held against the Non-Debtor Properties, including the Senior Blanket Liens in the amount of approximately \$51.2 million, an \$8 million lien against an additional Non-Debtor Property, and other liabilities.

Interestingly, in Chapter 11, the Debtor's interests in the Non-Debtor Entities, including the Pending Sales/refinancings, are essentially the sole source of funding of the Amended Plan. In the Reply, the Debtor reaffirms his belief that the net proceeds from the Pending Sales/refinancings (taking into account the Senior Blanket Liens, other liabilities, and closing costs) of the Non-Debtor Properties will successfully fund the Amended Plan and its proposed 100% payments, plus interest, to the estate's creditors. The Debtor has not provided any credible reason as to why his interests in the Non-Debtor Entities, which are admittedly secured by substantial debt, have zero value in Chapter 7 but enough equity to carry the entire Amended Plan in Chapter 11.

Due to the significant contradiction and lack of a persuasive reason, the Debtor has not established that the Amended Plan is in the best interests of the general unsecured creditors.

D. The Debtor's Request for an Extension of the Confirmation Deadline is Denied

Pursuant to the *Order: (1) Denying Without Prejudice Motions to Convert or Dismiss Chapter 11 Case and (2) Fixing May 31, 2023 as the Deadline for the Debtor to Obtain an Order Confirming a Plan* [Doc. No. 119], the Confirmation Deadline "will not be extended absent exceptionally compelling circumstances."

Per the Reply, the Debtor requests that the Confirmation Deadline be extended to at least June 30, 2023 so that the Pending Sales, which are being held up by negotiations with the secured creditors of the Non-Debtor Properties, may close and the additional sales/refinancing of the remaining Non-Debtor Properties may advance. The Debtor believes that such an extension would result in greater certainty regarding the net proceeds available to the estate to fund the Amended Plan.

The Court's order setting the Confirmation Deadline was entered on October 19, 2022 – over seven months ago. The Debtor was aware of the importance of the sales and refinancings of the Non-Debtor Entities to fund the Amended Plan. The Debtor was similarly aware of the necessity to provide concrete financial figures with respect

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to such sales and refinancings by the Confirmation Deadline in order for the Court to evaluate the feasibility of the Amended Plan. The Court finds that the Debtor's reasons for an extension of the Confirmation Deadline do not amount to exceptionally compelling circumstances. Therefore, the request for an extension of the Confirmation Deadline is denied.

III. Conclusion

Based upon the foregoing, the Confirmation Motion is **DENIED**. As the Debtor has failed to obtain confirmation of the Amended Plan by May 31, 2023, pursuant to the *Order: (1) Denying Without Prejudice Motions to Convert or Dismiss Chapter 11 Case and (2) Fixing May 31, 2023 as the Deadline for the Debtor to Obtain an Order Confirming a Plan* [Doc. No. 119], the case is hereby converted to Chapter 7 without further notice or hearing. The Court will prepare the order.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Evan Hacker or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court notes that the HOA advances a number of arguments that were previously addressed in its *Motion to Dismiss or Convert Chapter 11 Case* [Doc. No. 81]. These arguments will not be revisited at this stage of confirmation of the Amended Plan.

Party Information

Debtor(s):

Moussa Moradieh Kashani

Represented By
Sandford L. Frey
Robyn B Sokol

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2:22-14858 Mylife.com Inc.

Chapter 11

Adv#: 2:23-01094 United States Of America v. Mylife.com Inc.

#15.00 Hearing
RE: [19] Motion For Summary Judgment # 2 Exhibit Unpublished Opinion (Huezo) # 3 Exhibit Proof of Claim No. 18 # 4 Exhibit Declaration of Aloisio # 5 Exhibit District Court Complaint # 6 Exhibit District Court Summary Judgment Order # 7 Exhibit District Court Stipulated Order # 8 Proposed Order Proposed Summary Judgment) (VanDeusen, Christopher)

Docket 19

***** VACATED *** REASON: CONTINUED 6-7-23 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mylife.com Inc.

Represented By
Leslie A Cohen

Defendant(s):

Mylife.com Inc.

Represented By
Leslie A Cohen

Plaintiff(s):

United States Of America

Represented By
Leah Victoria Lerman
Christopher VanDeusen

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2:22-15985 Francisco J. Ortega and Snizhana Ortega

Chapter 11

#16.00 HearingRE: [46] Application for Compensation Final Application of Subchapter V Trustee for Approval of Fees and Reimbursement of Expenses for Gregory Kent Jones (TR), Trustee, Period: 11/8/2022 to 5/4/2023, Fee: \$1,925.00, Expenses: \$0.00. (Jones (TR), Gregory)

Docket 46

Tentative Ruling:

5/30/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

Having reviewed the first and final application for fees and expenses filed by the Subchapter V Trustee [Doc. No. 46] (the "Application"), the Court approves the Application and awards the fees and expenses set forth below on a final basis:

Fees: \$1,925.00

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Francisco J. Ortega

Represented By

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CONT... Francisco J. Ortega and Snizhana Ortega

Chapter 11

Jeffrey S Shinbrot

Joint Debtor(s):

Snizhana Ortega

Represented By
Jeffrey S Shinbrot

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

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11:00 AM

2:19-18382 Shoezoo.com, LLC

Chapter 7

#100.00 APPLICANT: Trustee - JOHN J. MENCHACA

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

***** VACATED *** REASON: WILL BE HEARD AT 10:00 AM TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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11:00 AM

2:19-18382 Shoezoo.com, LLC

Chapter 7

#101.00 APPLICANT: Accountant for Trustee - MENCHACA & COMPANY LLP

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

*** VACATED *** REASON: WILL BE HEARD AT 10:00 AM TODAY

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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2:19-18382 Shoezoo.com, LLC

Chapter 7

#102.00 Charges, U.S. Bankruptcy Court

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

*** VACATED *** REASON: WILL BE HEARD AT 10:00 AM TODAY

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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2:19-18382 Shoezoo.com, LLC

Chapter 7

#103.00 Other State or Local Taxes (post-petition) - Franchise Tax Board (ADMINISTRATIVE)

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

***** VACATED *** REASON: WILL BE HEARD AT 10:00 AM TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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Hearing Room 1568

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2:19-18382 Shoezoo.com, LLC

Chapter 7

#104.00 APPLICANT: Attorney for Trustee (Other Firm) - SULMEYER
KUPETZ A PROFESSIONAL CORPORATION

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

***** VACATED *** REASON: WILL BE HEARD AT 10:00 AM TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter

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2:19-18382 Shoezoo.com, LLC

Chapter 7

#105.00 APPLICANT: Attorney for Trustee Fees (Other Firm) - GREENSPOON
MARDER LLP

Hearing re [127] Applications for chapter 7 fees and administrative expenses

Docket 0

***** VACATED *** REASON: WILL BE HEARD AT 10:00 AM TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shoezoo.com, LLC

Represented By
Charles Shamash

Trustee(s):

John J Menchaca (TR)

Represented By
Steven Werth
Jeffrey L Sumpter